JD(ATL)—36—03
Bastrop, LA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
ATLANTA BRANCH OFFICE

SEAPAC OF LOUISIANA, INC.

and	**Cases 15-CA-16825**
	15-CA-16860
PAPER, ALLIED-INDUSTRIAL	**15-CA-16873**
CHEMICAL AND ENERGY	**15-CA-16907**
WORKERS INTERNATIONAL UNION	

Kevin McClue, Esq.,
for the General Counsel
Barry Frederick & Kellam Warren,Esqs.,
for the Respondent
Monty G. Payne,,
for the Charging Party

BENCH DECISION

STATEMENT OF THE CASE

JANE VANDEVENTER, **Administrative Law Judge**. This case was tried on April 28 and 29, 2003, in Monroe, Louisiana.[1] The complaint alleges Respondent violated Section 8(a)(1) of the Act by threatening employees with reprisals and with plant closure if they supported the Union, told employees their overtime was reduced because of the Union, told employees to report the names of Union supporters to it, threatened reprisals and questioned employees concerning charges filed with the National Labor Relations Board (Board), and maintained rules prohibiting talking about the Union. The complaint also alleges Respondent violated Section 8(a)(3) of the Act by suspending, more closely observing, and discharging an employee. The Respondent filed an answer denying the essential allegations in the complaint. After the conclusion of the evidence, the parties made oral arguments. I issued a Bench Decision pursuant to Section 102.35 (a)(10) of the National Labor Relations Board's (The Board's) Rules and Regulations, setting forth findings of fact and conclusions of law.

[1] At the hearing, the name of the Respondent was corrected, as reflected in the case caption.

I certify the accuracy of the portion of the transcript, as corrected,[2] pages 284 to 312, containing my Bench Decision, and I attach a copy of that portion of the transcript, as corrected, as "Appendix A."

Below, with complete citations, are cases cited in the Bench Decision with incomplete citations: ***Our Way, Inc.***, 268 NLRB 394 (1983); ***Pacesetter Corp.***, 307 NLRB 514, 517 (1992); ***Kroger Co.***, 311 NLRB 1187, 1193 (1992), ***C. M. Brier Corp.***, 310 NLRB 1362 (1993); ***Jefferson Smurfit Corp.***, 325 NLRB 280 (1998); ***Fieldcrest Cannon, Inc.***, 318 NLRB 470 (1995); ***Harding Glass Co.***, 316 NLRB 985, 991 (1995); ***Debber Electric***, 313 NLRB 1094 (1994); ***Bradford Coca-Cola Bottling Co.***, 307 NLRB 647 (1992); ***K.G. Knitting Mills, Inc.***, 320 NLRB 374, 379 (1995); ***Reno Hilton***, 320 NLRB 197 (1995); and ***Prudential Insurance Company***, 317 NLRB 357 (1995). In support of my finding that a discharge pursuant to an unlawful no-solicitation rule violates Section 8(a)(1) and (3) of the Act, I cite ***Gemco***, 271 NLRB 1190, fn. 1 (1984).

In the Discussion portion of the Bench Decision, I did not fully discuss one Section 8(a)(3) allegation in the complaint, that of more closely supervising Marvin Lowery's work on January 3, 2003. The undisputed facts that Supervisor Danny Watt immediately reported to Sonny Bordelon any time he saw Lowery talking with other employees, in the absence of any no-talking rule, and that Bordelon immediately went to each of the employees and demanded to know everything that had been said in Lowery's short conversations with them, show that Respondent was indeed keeping a very close watch on Lowery. From all the evidence detailed in the Bench Decision, it is clear that Respondent was watching Lowery closely in order to find out about his discussions with other employees concerning either the Union or working conditions. I find that Respondent's close supervision of Lowery on January 3, 2003, violated Section 8(a)(3) of the Act.

Exceptions may now be filed in accordance with Section 102.46 of the Board's Rules and Regulations, but if they are not timely or properly filed, Section 102.48 provides that my Bench Decision shall automatically become the Board's Decision and Order.[3] Attached as "Appendix B" is Notice referred to in the Order.

Dated, Washington, D.C.

Jane Vandeventer
Administrative Law Judge

[2] I have corrected the transcript containing my Bench Decision and the corrections are set forth in the attached Appendix C.

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(Whereupon, the hearing was adjourned, to reconvene at 3:30 p.m., this same day, Tuesday, April 29, 2003)

A F T E R N O O N S E S S I O N

3:11 p.m.

JUDGE VANDEVENTER: Good afternoon.

I'm now prepared to issue my bench decision in this matter.

I. JURISDICTION

This decision is issued pursuant to the Board's Rule at 102.35(a)(10) of the National Labor Relations Board's Rules and Regulations.

The case has been tried on April 28 and 29, 2003, in Monroe, Louisiana. The complaint alleges that Respondent violated Section 8(a)(1) of the Act by threatening employees with reprisals and with plant closure if they supported the union, telling employees their overtime was reduced because of the union, telling employees to report the names of union supporters to it, threatening reprisals and questioning employees concerning charges filed with the National Labor Relations Board and maintaining rules prohibiting talking about the union, as well as an over-broad no-solicitation rule.

The complaint also alleges that Respondent violated Section 8(a)(3) of the Act by suspending, more closely observing, and discharging an employee. The Respondent filed an answer denying the essential allegations of the complaint.

After the conclusion of the evidence, the parties made oral arguments which I have considered.

Based on the testimony of the witnesses, including particularly my observations of their demeanor while testifying, the documentary evidence, and the entire record, I make the following.

II. FINDINGS OF FACT

1. Jurisdiction

Respondent is a corporation with an office and place of business in Bastrop, Louisiana, where it is engaged in the conversion and warehousing of paper pulp products. During a representative one-year period, Respondent sold and shipped from its Bastrop, Louisiana, facility goods valued in excess of $50,000 directly to points outside the state of Louisiana.

Accordingly, I find as Respondent admits, that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The Charging Party, also called the union, is a labor organization within the meaning of Section 2(5) of the Act.

II. UNFAIR LABOR PRACTICES

A. Facts

The Charging Party, union, filed a petition to represent the employees of Respondent on September 15, 2002. Its organization among the employees had begun in August 2002 when Employee Marvin Lowery sought out the union and had several

union meetings at his house. The organizer for the union was a Mr. Broussard.

On October 15, 2002, a representation election was held and Marvin Lowery was the sole union observer. The union received a majority of the votes, and on October 25, 2002, the union was certified as the employees' representative.

Also on October 25, 2002, Mr. Sonny Bordelon, the plant vice president for operations at the Respondent's facility in Bastrop, had a short conversation with Employee Marvin Lowery, in which he asked Mr. Lowery if he had been talking to a certain supervisor and asked him, What makes you think you can talk about company business?

Mr. Lowery responded that since the union was representing the employees, it was now part of his job to try to solve employees' problems. A few days later, on the 28th of October, the company was notified that Mr. Lowery was the employees' representative for Weingarten purposes at its disciplinary interviews and designated him by the verbiage "plant Union vice President."

In early November, Mr. Bordelon had a job interview with Employee Rodney McWilson, or Job Applicant Rodney McWilson at that time, and during his initial job interview instructed him that if anyone talked to him about the union on company time that he was to tell a supervisor about it. Both Rodney McWilson

testified to that, as did Mr. Bordelon. They testified rather similarly.

Around the 12th of November, Mr. Bordelon came to Lowery's workstation and showed him an NLRB charge form. According to Mr. Lowery, he read aloud and pointed to the language at the bottom, which says, "Willful false statements on this charge can be punished by fine and imprisonment."

After presenting the charge, Mr. Bordelon protested that the charge was not true and accused Mr. Lowery of passing on false information. Mr. Lowery denied doing so. Mr. Bordelon said, "You're passing on false information and someone is going to be accountable for that."

According to Mr. Lowery, later in the same conversation Mr. Bordelon said that if this plant shuts down, it would be a warehouse and I -- that is, Mr. Bordelon -- would have a job at it. Mr. Bordelon denied making that latter remark about the plant closing.

The next incident occurred some three days later. It was reported to Charles Williams, a supervisor at Respondent, that Lowery had talked to a new employee, the same Rodney McWilson who was mentioned earlier. Mr. Lowery was called into the office by Mr. Williams and was suspended for three days for talking to the employee on company hours, and according to General Counsel Exhibit 7, which is the memorialization of the suspension, because Mr. Lowery

"solicited union info to Rodney McWilson." During his testimony, Mr. Williams also stated that any discussion about the union is solicitation.

During the interview in which he was accorded his suspension, Mr. Lowery protested that he was being treated differently than other employees who talked about the union on work time also, but talked negatively about it, and mentioned a couple of names.

Three days later Mr. Williams, the supervisor, told those two employees -- the two employees that Mr. Lowery had mentioned -- not to say anything derogatory about the union but to keep their opinions of the union to themselves. And about the same day, Mr. Bordelon told them not to talk about the union.

Both Mr. Williams and Mr. Bordelon agreed that they did give such instruction to these two employees. In fact, the only evidence of that incident comes from the testimony of Mr. Williams and Mr. Bordelon.

At least since the time alleged in the complaint, which is July 13, 2002, but apparently, according to the company handbook, since 1996, the company has maintained a no-solicitation rule, which is quoted verbatim in the complaint, but I will quote it again.

"Employees are encouraged to take an active part in civic affairs and worthy charitable activities. However, in

order to avoid interference with work and to protect employees from unnecessary annoyance, solicitation and distribution on company premises is prohibited."

Mr. Lowery testified without contradiction that gambling pools, including football pools, and lottery gambling pools, had occurred at work. Candy sales had occurred at work within the two years prior to the election, and the football gambling pool was even posted by the employee time clock, listing names of people who participated and amounts.

The next incident that is involved in the facts -- in the allegations -- took place on December 12, 2002, during a conversation between Mr. Lowery and Mr. Bordelon in Mr. Bordelon's office. They talked about a number of things. According to Mr. Lowery, the purpose of the conversation was to ease tensions or to rebuild bridges -- I'm not sure he used those words, but to ease tension.

One of the subjects was the situation of another employee, and NLRB charges that had been filed by the union were discussed also. During that conversation, according to Mr. Lowery's testimony, Mr. Bordelon said, If you butt heads with me, you'll lose and I'll win, and then went on to state that the company stood behind him.

In addition, according to both Mr. Bordelon and Mr. Lowery, there was some discussion of the possibility of Mr. Bordelon filing charges or allegations against the union. Mr.

Lowery then also testified that another incident occurred in this conversation, in which Mr. Bordelon told him that, "Since you knew about the email and didn't tell me, I purposely cut your overtime."

Additional facts which emerged in testimony were that the email was sent in either September or October and contained allegations concerning Mr. Bordelon and that when Mr. Bordelon showed the email to Mr. Lowery in October, Mr. Lowery said that he had known about it already. Mr. Bordelon denied telling Mr. Lowery that he had purposely cut Mr. Lowery's overtime.

A letter was mailed on the 23rd of December to the company, notifying the company that Mr. Lowery would be on the union's negotiating committee and would therefore need to be off work to participate in negotiations on the 6th and 7th of January, 2003.

On the 3rd of January, 2003, Mr. Bordelon was told by Supervisor Danny Watt that Mr. Watt had seen Mr. Lowery talk to two employees in the plant -- Jeremy May and Jason Thompson. Mr. Bordelon immediately went to each employee and asked him what Marvin Lowery had said to each of them.

Mr. Bordelon then, before talking to Mr. Lowery, decided to discharge Mr. Lowery and wrote out his discharge form. That's according to Mr. Bordelon's testimony. Mr. Bordelon asked each employee what Mr. Lowery had said to him and for the whole conversation.

Mr. Jeremy May stated that he had said, What's going on, and then Mr. May had told him that Mr. Watt had taken computer games off the computer terminals that employees had access to and told the employees that they shouldn't play computer games.

According to Mr. Lowery's testimony, which agreed with what Mr. May said -- Mr. Lowery then said something to the effect that if they were going to prohibit employees in the plant from playing computer games, they should prohibit all employees from playing computer games.

According to Mr. Bordelon's testimony, when he asked Mr. Thompson what Mr. Lowery had said to him, Mr. Thompson said, "He asked me how much I weighed." This agrees with Mr. Lowery's testimony, who testified that when he spoke to Jason Thompson in passing, he had seen him stand on a scale and asked him how much he weighed.

After Mr. Thompson replied and said that Mr. Lowery had asked him how much he weighed, Mr. Bordelon said to Jason Thompson, If you lie to me and we go to Court, you could go to jail. Later, Mr. Thompson came to Mr. Bordelon's office, apparently concerned with the remark that Mr. Bordelon had made to him and apparently expressed that concern.

At that point, Mr. Bordelon showed the employee a Board charge, which apparently had been one of the ones filed against the company, and pointed to the penalty statement at the

bottom of the charge, which I quoted earlier, the same one that he quoted to Mr. Lowery on November 12.

Thompson, according to Mr. Bordelon, said to Mr. Bordelon that Mr. Lowery didn't talk about that, referring to the charge. In testimony, Mr. Bordelon stated that Mr. Lowery was going behind management's back and discussing management's business with employees about the computers.

Also in response to the question why did he tell Mr. Thompson that he could go to jail, Mr. Bordelon answered, "Because Marvin had just passed by."

One fact I omitted from the discussion of the November 12 conversation, when Mr. Bordelon came to Mr. Lowery at his workstation, according to Mr. Lowery's testimony, Supervisor Danny Watt was present and that was not contradicted.

As to credibility findings, overall, there is a lot of agreement, but there are a few head-to-head differences where credibility is the only way to make the determination. Overall, I found Mr. Lowery careful and precise in his answers to questions. His testimony was corroborated by both Jeremy May and Jason Thompson, both as reported by Mr. Bordelon.

As to some small facts, such as Mr. Lowery said he left his workstation to find a broom, Mr. Bordelon testified that when he asked Jeremy May what Marvin Lowery had said to him that May first said, "He asked me for a broom." This corroborates Mr. Lowery's testimony.

In addition, the testimony agrees concerning the issue about Danny Watt talking to Mr. May about computer games. Also, the response of Mr. Thompson, as testified to by Mr. Bordelon, "He asked me how much I weigh," agrees with Mr. Lowery's testimony as well.

While Mr. Bordelon was open and above-board about many things, his memory was less precise. He confessed to failure of memory as to dates or timing of different events on several occasions. His testimony was inconsistent in a couple of respects that I can mention and others in addition; one with regard to breaks.

He contradicted himself as to what was a break or what wasn't a break or changed his testimony, if he didn't contradict himself. In terms of the rule applied to breaks about whether you could talk about the union or ask people to sign a card during a cigarette break, his testimony changed two or three times.

He contradicted himself on a number of occasions and did not display care or precision in his answers. Another indication of lack of precision was the equation of solicitation with any mention of the union, instances of which occurred repeatedly throughout Mr. Bordelon's testimony.

Therefore, when there is a contradiction between Mr. Lowery's testimony and Mr. Bordelon's, for all the reasons that I've stated, I credit Mr. Lowery.

B. Discussion and Analysis

1. Alleged 8(a)(1) violations

With regard to the no-solicitation rule -- I'll begin with that since it is really the foundation of several of the other allegations or it feeds into several of the other allegations -- the rule included in the company handbook, which was quoted in the factual section, is overly broad and clearly violative of Board policy under the lead case in that area, Our Way, Inc., because the rule prohibits solicitation at all times, including employees' own time anywhere on the company's premises, including in nonwork areas.

The company argues that oral modifications of the rule announced in October 2002 by Mr. Hahn and by Mr. Bordelon save it from being unlawful. The facts regarding that, are that Mr. Hahn, some time in an all-employee meeting prior to the election, and Mr. Bordelon in a similar circumstance, told employees that the rule did not prohibit solicitation on breaks or lunch but only on company time.

Respondent has cited one case in which an oral modification of an invalid rule was effective. There are numerous Board cases, however, which have held oral modification of such rules ineffective. This case falls very clearly into the latter category, first, by the handbook's own terms and by the terms of Mr. Hahn's letter of October 24, 2002, the

handbook, the written rule was cited as the company's policy.

Therefore, the oral modifications were not clear nor were they consistent. They were superseded by a repeated reiteration of the original written rule. In any case, the oral modification continued to announce an invalid rule, discriminatory by its terms and in application.

That it was discriminatory by its terms is shown by Mr. Bordelon's testimony that solicitation was not permitted on breaks; that is, nonwork time, such as smoke breaks or bathroom breaks. Even if an oral rule could trump the published rule, there were inconsistent announcements of this oral variation, and it was over-broad in that it applied to breaks as just mentioned.

That it was discriminatory in application is shown by the uncontradicted evidence that candy sales, football gambling pools, and lottery gambling pools were openly engaged in by employees and were tolerated. Football pools were even posted near the time clock. As the handbook requires all postings to have management approval, I conclude that the football pool posting was at the least tolerated if not approved.

In addition, the rule was applied during the fall of 2002 to union solicitation, even though it had not been applied to the candy and gambling pool solicitations. It was

applied to any mention of the union, whether it was truly determined to be solicitation or not, or even without such a determination.

It was used to prohibit any talk about the union, while other kinds of talk were permitted, as is eminently clear from the testimony of Mr. Bordelon and Mr. Williams, as well as other witnesses. It appears from the testimony of Mr. Bordelon and Mr. Williams that Respondent equated union talk with union solicitation, or at least didn't bother to find out if there was a difference; did not investigate and determine if there was a difference.

This is shown by many statements in Mr. Bordelon's testimony. For example, his remarks to Mr. McWilson in the job interview that if anyone talked about the union to him, he was to report it; that is, talked to him about it on the company time.

It is also shown by Respondent's suspension document to Mr. Lowery, which states that Mr. Lowery was suspended for "soliciting union info to" an employee. You don't solicit to; you solicit from. You talk to. This variation in language indicates that solicitation and talking were not distinguished in administering the no-solicitation rule.

Further evidence that the published rule remained in full force and effect and that the oral modifications did not alter it are the continued distribution of the handbook, as

evidenced by the distribution to Rodney McWilson in early November, as well as, I mentioned earlier, by Greg Hahn's October 24 letter, as well as by continued references to the handbook rule and the discipline given to Marvin Lowery on the 15th of November.

I find that the company's no-solicitation rule, both in its written and oral forms, is overly broad and has been applied discriminatorily. For all those reasons, it violates Section 8(a)(1) of the Act.

Turning to paragraph 8, it is undisputed that Mr. Bordelon told a job applicant, Rodney McWilson, in a job interview that it is against company rules to talk about the union on company time. Mr. Bordelon also instructed the employee to report to supervisors if he heard anyone talking about the union on company time.

I would note that that's additional evidence that the oral modifications of the rule did not save it from its unlawful character, because telling an employee that it's unlawful to talk about an employee on company time is over-broad. Company time has been held to mean any time that the employee is at the company. It's not confined to working time.

Mr. Bordelon admitted telling Mr. McWilson these things. This conduct violates Section 8(a)(1) in two ways. First, it imposes a discriminatory no-union-talking rule, which violates Section 8(a)(1) of the Act. See, for example,

Pacesetter Corporation, 307 NLRB No. 89, The Kroger Company, 311 NLRB No. 153, C.M. Brier Corporation, 310 NLRB No. 225.

Secondly, it requests an employee to report to management concerning the union activities of other employees. While questions concerning employees' own views about a union may sometimes not be coercive, depending on the circumstances, questions about the union views of other employees are nearly always coercive. See, e.g., Sundance Construction Management, Inc., 325 NLRB 1013 (1998), State Equipment, Inc., 322 NLRB 631, 642-644 (1996).

Paragraphs 9 and 10 of the complaint allege that on November 18, 2002, Sonny Bordelon and Charles Williams separately told two employees that they could not talk about the union on company time. Both Mr. Bordelon and Mr. Williams admit that they did so, but Williams stated that he limited his prohibition to negative talk about the union.

It is undisputed that there was no rule against employees' talking with one another and that they frequently talked about sports, hunting, fishing, their social lives, and other subjects. It is clear Board law that a rule which prohibits talking about the union, whether pro or con, but permits talking about all other subjects is discriminatory and violates Section 8(a)(1), and again would refer to the cases cited, Pacesetter Corp., The Kroger Company, and C.M. Brier Corp.

Therefore, I find that Respondent violated Section 8(a)(1) of the Act as alleged in Paragraphs 9 and 10 of the complaint.

There are two allegations relating to November 12, 2002. First, the General Counsel alleges that Sonny Bordelon's reading of the perjury warnings on the NLRB charge, joined with his accusations that Lowery was lying or "passing on false info," and Mr. Bordelon's statement that someone is going to be accountable for this, were coercive and would tend to interfere with Board processes. I agree.

I find that Mr. Bordelon's remarks in that context and taken together violated Section 8(a)(1) of the Act. See, for example, Jefferson Smurfit Corp., 325 NLRB No. 35, Fieldcrest Cannon, Inc., 318 NLRB No. 54, Harding Glass Co., Inc., 316 NLRB No. 148, Debber Electric, 313 NLRB No. 186, and Bradford Coca-Cola Bottling Company, 307 NLRB No. 107.

Second, the General Counsel alleges a threat of plant closure, based on Mr. Bordelon's remark. This is a straight credibility question as Mr. Bordelon denied the remark. For the reasons stated above, I credit Mr. Lowery and find that Mr. Bordelon did make this statement.

Furthermore, Lowery testified without contradiction that Danny Watt, a supervisor, was with Sonny Bordelon at the time he made the statement. While he was not called to testify and no explanation for this was proffered, I

therefore draw the inference that had he testified, his testimony would have agreed with Lowery's.

I find that Bordelon's statement is at least an implied threat of job loss because of the union and that it violated Section 8(a)(1) of the Act.

Regarding the allegation in Paragraphs 8(d) and 8(e), I credit Lowery's testimony that as to Mr. Bordelon's statement that he cut Lowery's overtime because Lowery hadn't told him something he knew because of his involvement with the union. And this appears to be in retaliation for that union involvement and as such, this statement violated Section 8(a)(1) of the Act.

However, Bordelon's remarks to the effect that he would win if anyone went head-to-head with him was made in the context of charges filed by the union and also in the context of his remarks that perhaps he should make some allegations or charges. I've credited Lowery's testimony that Bordelon said, You'll lose and I'll win. The use of the word "you" appears to refer to Lowery, as he was the only other person in the room.

Based on that, I find that it is a threat of unspecified reprisals to Lowery, who was known to Respondent as the principal union informant, and therefore, that it violates Section 8(a)(1) of the Act. And I would refer to cases Sundance Construction Management, Inc., cited above, as well as K.G. Knitting Mills, Inc., 320 NLRB No. 38, Reno Hilton, 320 NLRB No.

27, and Prudential Insurance Company, 317 NLRB No. 57.

Finally, the remaining allegations are related to Sonny Bordelon's remarks to Employee Jason Thompson, which occurred in the context of Mr. Bordelon asking the two employees seen speaking with Mr. Lowery what they had talked about, certainly, an unprecedented occurrence in a plant where employees were permitted to talk freely with one another and did so on many occasions, as the record reflects.

Mr. Bordelon told the employee, Jason Thompson, that if he lied and, We got to Court, you could go to jail. Not surprisingly, the employee came to Mr. Bordelon later to ask him about it, at which time Mr. Bordelon showed Thompson a Board charge and read him the penalty statement at the bottom.

This employee had not filed a charge. Such threats concerning penalties for lying would certainly tend to discourage an employee from cooperating with the Board in any investigation. The remarks, combined with showing a charge form, connect the threats with statements made to the Board.

I do not find the violation alleged in Paragraph 8(f), as it is not clear from these facts that Mr. Bordelon was questioning the employee about any particular Board charge or any current charge or that the employee understood that he was questioned about a Board charge.

I shall therefore recommend dismissal of Paragraph 8(f). However, Mr. Bordelon's predictions of possible dire

penalties for employees who lie, and in connection showing a Board charge, were coercive, and I find that the Respondent by making this statement to Employee Thompson violated Section 8(a)(1) of the Act, as alleged in Paragraph 8(g) of the complaint.

2. Allegations of Section 8(a)(3) violations.

Marvin Lowery was suspended on November 15, 2002, because of an employee's report that Lowery had mentioned the union to him. The suspension by its terms states that it was accorded because Lowery violated Respondent's no-solicitation rule. As that rule has been found to be unlawful, the suspension and any other oral warnings given to Lowery for allegedly soliciting for the union were likewise unlawful and violated Section 8(a)(1) of the Act.

Mr. Bordelon testified that Lowery would not have been discharged in January 2003 but for the unlawful suspension in November 2002. Therefore, Lowery's discharge was decided upon in reliance upon the previous unlawful discipline under the unlawful rule, and hence the discharge, too, derivatively violated Section 8(a)(1) of the Act.

General Counsel argues that the suspension and discharge also violated Section 8(a)(3) of the Act and were taken in retaliation for Mr. Lowery's having engaged in union activities and were done in order to discourage other employees from engaging in similar union activities.

In order to prove that a Respondent has discharged an employee in violation of Section 8(a)(3), General Counsel must show that the employee was engaged in protected activities, that the Respondent was aware of those activities, harbored some animus towards those activities, and has discharged the employee in retaliation for those activities. The fourth prong is sometimes expressed is there is a connection or a nexus between the discharge or the suspension, the action taken against the employee, and the employee's protected activities.

These elements constitute a prima facie case. The Respondent may rebut the prima facie case by showing that it would have discharged the employee in any event, even in the absence of any protected activities. Cite is Wright Line , 251 NLRB 1083 (1990), enfd., 662 F.2d 899, 1st Cir. (1981), cert denied, 453 U.S. 989 (1982), approved in Transportation Management Corp., 462 U.S. 393 (1983).

Applying the law to the facts of this case, Mr. Lowery's union activities are not really in dispute. He was the main activist in the beginnings of the union campaign in August and September. While it is not shown that that fact was known to Respondent, it has been shown that as of October 15, 2002, his status as a supporter of the union was known, as he was the union observer at the election.

Within two weeks of the election, he was named to the Respondent as the employees' representative on behalf of the

union in the plant, and some two months -- less than two months later, he was named as the employee representative to the negotiating committee on behalf of the union. These three prominent roles on behalf of the union -- the observer, the union representative in the plant, and the membership on the negotiating committee -- were all known to the Employer.

The actions taken by the company are the suspension on November 15, 2002, and the discharge on January 8, 2003, based on events occurring on January 3, 2003, according to the discharge documents. The animus of the Employer, of the Respondent, toward union activities has been amply demonstrated by the numerous 8(a)(1) violations found above, its administration of its no-talking rule and no-solicitation rule exclusively to union activities and union talk and union solicitation.

The nexus or connection between this animus and union activities is demonstrated by several aspects of the evidence. First, several of the 8(a)(1) violations, the statements that have been found to violate Section 8(a)(1), were directed specifically at Mr. Lowery.

Most tellingly, though, perhaps, Mr. Bordelon admitted on cross-examination that the Respondent had -- that he had said in an affidavit that Respondent had discharged Mr. Lowery because he was soliciting and trying to find out about management's business for the union.

In addition, the nexus is shown with the suspension. There's a clear connection shown, since the suspension was specifically for talking about the union with a new employee with no real indication that there was solicitation involved, and secondly, in violation in pursuance of an invalid and over-broad no-solicitation rule as well.

Another factor is Mr. Bordelon's testimony concerning company business being connected with Mr. Lowery's union activities. The fact that Mr. Bordelon connected Mr. Lowery's intrusion, as he saw it, into company business with Mr. Lowery's union activities is shown by Mr. Lowery's testimony, which was uncontradicted, that Mr. Bordelon stated to him on October 25 that by talking with a supervisor, Mr. Lowery was getting into company business.

And in response to that, Mr. Lowery explained to Mr. Bordelon that since the union was the representative of the employees, it was part of Mr. Lowery's job to help solve employees' problems.

With respect to the discharge, Mr. Bordelon has admitted that he decided upon it with no investigation of Mr. Lowery's side of the story. He decided upon it after having Mr. Watt report to him that Mr. Lowery had talked to two employees, by asking the two employees what was said, getting from one of them the answer that he had just asked him how much he weighed, and getting from the other one the

information that Mr. May, the other employee, had spoken to Mr. Lowery about management's prohibition on employees playing computer games.

Mr. Lowery was not questioned about his version of the incidents prior to Mr. Bordelon making his decision to discharge Mr. Lowery. Another factor which shows the connection between Mr. Lowery's protected activities and his discharge is that the discharge was undertaken for arguably protected activity; that is, talking to other employees about working conditions and management actions regarding working conditions and employee discipline.

And on this point, there was no rule against employees talking except for the instances that I've discussed earlier about no talking about unions or no talking about solicitation for unions. It appears also that arguably protected activities, that is, discussion among employees regarding management actions, fairness, discipline, and other working conditions was regarded by Mr. Bordelon as grounds for discipline, including discharge.

Mr. Bordelon's testimony about what was management's business included exactly these things. Challenging management's decisions included, according to Mr. Bordelon, employees discussing management rules and management decisions involving employee discipline. Consequently,

management's rationale for the discharge -- getting into management's business -- appears to be another phrase for employees talking about their working conditions; in other words, for protected activity.

Respondent in its argument raised the issue of being out of his workplace. Mr. Lowery, although being out of his workplace was mentioned on his discharge, was not fired for wandering. Mr. Bordelon's testimony makes it very clear he was fired for challenging management's decisions and getting into management's business, not for wandering.

Being out of his workplace to go to smoke or to get a broom is tolerated. If it's not tolerated in order to engage in protected concerted activities with other employees, that too would be discriminatory. Hence, management's asserted reason does not rebut the prima facie case. In fact, it adds weight.

A close analogy of the prohibition on getting in management's business, can be made to the discriminatory no union-talk rule. It would also be unlawful for an Employer to maintain a rule or policy prohibiting talk about management's decision concerning employee discipline and other working conditions, while at the same time permitting employees to talk on all other subjects.

Respondent appears to believe that it may prohibit union talk and solicitation of any kind while simultaneously

permitting other kinds of talk and even other kinds of solicitation. If it does believe this, it is mistaken. Such a policy violates Section 8(a)(1) of the National Labor Relations Act.

Respondent also appears to believe it can forbid employees to talk about employee discipline, working conditions, and management's actions involving those subjects while permitting other kinds of talk. This, too, is a mistaken idea. Such a policy is discriminatory and interferes with employees' exercise of their Section 7 rights. As it does so, it violates Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. By promulgating and maintaining overly broad and discriminatory rules against soliciting for the union and against talking about the union, from threatening employees with job loss and other unspecified reprisals because of their activities in support of the union; informing employees their overtime was reduced because of their involvement with the union; telling employees to report to management any employees who talk about the union, and threatening employees with unspecified reprisals for participating in filing Board charges or cooperating with the Board, Respondent has violated Section 8(a)(1) of the Act.

2. By suspending, more closely observing the work of, and by discharging its employee Marvin Lowery because of his union

and other protected concerted activities, Respondent has violated Section 8(a)(3) and (1) of the Act.

3. The violations set forth above are unfair labor practices affecting commerce within the meaning of the Act.

REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it be required to cease and desist therefrom and to take certain affirmative action necessary to effectuate the policies of the Act.

I shall also recommend that Respondent be ordered to remove from the employment records of Marvin Lowery any notations relating to the unlawful actions taken against him and to make him whole for any loss of any earnings or benefits he may have suffered due to the unlawful actions taken against him, in accordance with F.W. Woolworth Company, 90 NLRB 289 (1950), plus interest as computed in accordance with New Horizons for the Retarded, 283 NLRB 1173 (1987).

I shall also recommend that Respondent be ordered to rescind its overly broad no-solicitation rule and its discriminatory no talking about the union rule.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended order.

ORDER

That Respondent, SEAPAC of Louisiana, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from promulgating and maintaining overly broad and discriminatory rules against soliciting for the union and against talking about the union from threatening employees with job loss and other unspecified reprisals because of their activities in support of the union, informing employees their overtime was reduced because of their involvement with the union, telling employees to report to management any employees who talk about the union, and threatening employees with unspecified reprisals for participating and filing Board charges or cooperating with the Board.

2. Suspending, more closely observing the work of, and discharging employees because of their union or other protected concerted activities

c. In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

3. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind its unlawful no-solicitation policy.

(b) Rescind its discriminatory rule against talking about the union.

(c) Within 14 days from the date of this Order, offer Marvin Lowery full reinstatement to his former job or if that no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges

previously enjoyed.

(d) Make Marvin Lowery whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in remedy section of this decision.

(e) Within 14 days from the date of this Order, remove from its files any reference to the unlawful suspension and discharge, and within three days thereafter notify the employee in writing that this has been done and that the suspension and discharge will not be used against him in any way.

(f) Preserve and within 14 days of a request or such additional time as the Regional Director may allow for good cause shown provide at a reasonable place designated by the Board or its agents all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of back pay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its Bastrop, Louisiana, location copies of the notice I will attach to my written decision, which will be marked "Appendix." Copies of the notice on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all

places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that during the pendency of these

proceedings the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail at its own expense a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 1, 2002.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region, attesting to the steps that the Respondent has taken to comply.

That concludes my decision. As with all bench decisions, time for filing of exceptions commences when the written form of the decision is served on the parties, which will probably be in approximately three weeks' time rather than today. So read the rules for exceptions in the rules accordingly.

Is there anything else from any party?

MR. McCLUE: Not from the General Counsel, Your Honor.

MR. FREDERICK: No.

JUDGE VANDEVENTER: Thank you for your excellent presentations and participation in this proceeding.

The record is closed.

(Whereupon, at 4:08 p.m., the hearing was concluded.)

JD(ATL)—36—03
Bastrop, LA

APPENDIX B JD(ATL)—36—03

PAGE & LINE	CHANGE	TO
284:16	because the	because of the
284:17	union	union,
285:15	admits	admits,
285:16	Section 2, 6,	Section 2(6)
285:17	7	(7)
286:18	union	“plant Union
286:19	vice president…	vice President.”
286:19	Delete remainder of line after first two words.	
286:20	Delete entire line	
287:6	Willful	“Willful
287:7	imprisonment.	imprisonment.”
287:11	You’re	“You’re
287:12	that.	that.”
287:23	hours.	hours, [and delete paragraph break]
287:23	And	and
288:7	also and --- but	also, but
288:19	Delete first six words and capitalize At	
289:5	football pools, gambling pools, and	football pools, and
289:9	and amounts of people who participated.	of people who participated and amounts.
289:14	it would be	the
290:2	Since	“Since

PAGE & LINE Continued:	**CHANGE**	**TO**
290:4	overtime.	overtime.”
290:11	On approximately – a	A
291:2	Delete “about”	
291:6	Delete “he---“	
291:13	He asked…weighed	“He asked…weighed.”
292:4	that. I assume	that,
292:8	a question that	the question
292:10	Enclose entire line in quotation marks.	
292:15	overall, where---there	overall, there
292:22	broom. Mr.	broom, Mr.
292:24	Enclose in quotes: “He asked me for a broom.”	
293:4	Enclose in quotes: “He asked me how much I weigh,”	
293:21	instance	instances
293:25	Delete “I’m going to credit---“	
294:8	Delete “the main---“	
294:12	Delete first three words and begin sentence with “The”	
294:15	After first two words, delete remainder of line	
294:16	Delete “section ,”	
294:25	December	October
295:1	handbook was---	handbook,
296:2	not or without	not, or even without

PAGE & LINE Continued:	**CHANGE**	**TO**
298:2	Breyer	Brier
298:24	Breyer	Brier
299:1	violates	violated
299:12	Delete “then”	
301:5	about.	about,
301:6	Certainly,	certainly,
303:6	Or the	The
305:3	with new	with a new
305:21-2	Delete “speaking with---”	
305:23	employees	employees,
306:9	Delete “i.e.,”	
307:2	word	phrase
307:18	Delete “which”	
307:19	for Employer	for an Employer

APPENDIX C

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT publish and maintain no-solicitation rules that are overly broad and that discriminate against union solicitation.

WE WILL NOT tell you that your overtime is reduced because of the Union.

WE WILL NOT prohibit you from talking about the Union.

WE WILL NOT threaten you with job loss and other reprisals because of the Union.

WE WILL NOT threaten you with reprisals if you file charges with or cooperate with an investigation by the National Labor Relations Board.

WE WILL NOT request you to report back to us regarding the Union sentiments or activities of other employees.

WE WILL NOT suspend you because of your union sympathies or activities.

WE WILL NOT observe your work more closely because of your union sympathies or activities.

WE WILL NOT discharge you because of your union sympathies or activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of rights guaranteed you by Section 7 of the Act.

WE WILL reinstate Marvin Lowery to his former job, and WE WILL make him whole for any loss of pay or other benefits he may have suffered because of our unlawful suspension and discharge of him.

WE WILL remove from our files any reference to the unlawful suspension and discharge of Marvin Lowery, and notify him in writing that this has been done and that the suspension and discharge will not be used against him in any way.

SEAPAC, INC. OF LOUISIANA
(Employer)

Dated:_____ By:_____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.
1515 Poydras Street , Room 610, New Orleans, LA 70112-3723.
(504) 589-6361, Hours: 8: a.m. to 4: 30 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE.
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S
COMPLIANCE OFFICER, (504) 589-6389